

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FCC Mail Room

In the Matter of)	
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Pollack/Belz Broadcasting Company, LLC)	File No. BRC DT-20140801AKA
Licensee of Station KIEM-TV)	NAL Acct. No.: 201741420005
Eureka, California)	FRN: 0005416649
Facility ID 53382)	

**RESPONSE TO NOTICE OF
APPARENT LIABILITY FOR FORFEITURE**

Pollack/Belz Broadcasting Company, LLC ("Pollack/Belz"), licensee of broadcast station KIEM-TV, Eureka, California, by counsel, hereby responds to the Notice of Apparent Liability for Forfeiture issued by the Video Division on May 24, 2017.

At the outset, we would note that Eureka, California, the DMA in which KIEM-TV operates, is one of the smallest television markets in the country to have stations affiliated with all four major networks, in addition to several low power television stations rebroadcasting the programming of second-tier networks. At DMA rank #195, it is the third smallest market to have a full set of major network affiliates.

Consequently, the market is too small, and its audiences too fractionalized, to support full local news operations by all four major-network affiliates. Thus, KIEM-TV's competitors either forego local programming altogether (see <https://en.wikipedia.org/wiki/KVIQ>), or produce substantial parts of "local"

programming in studios located in Redding, California, albeit while maintaining studios in Eureka where some effort is made to cover Eureka-area news. See

[https://en.wikipedia.org/wiki/KBVU_\(TV\)](https://en.wikipedia.org/wiki/KBVU_(TV)) and <https://en.wikipedia.org/wiki/KAEF-TV>.

But necessarily management's attention at those stations is divided between Eureka and the much larger Chico-Redding market.

Redding is 147 highway miles from Eureka. This represents a three hour drive over twisting roads that traverse several mountain ranges. Consequently, the competing stations' level of responsiveness to local needs in Eureka is significantly inferior to that of KIEM-TV.

In support of this Response, attached hereto is the declaration of J Warren Hockaday, the General Manager of KIEM-TV, detailing the extent of public service provided by Pollack/Belz despite the extremely small size of its market.

As Mr. Hockaday describes, KIEM-TV goes far beyond the call of duty in promoting the activities and programs of numerous community organizations through an ambitious series of "Spirit of the North Coast" announcements that are produced by the station free of charge and broadcast over its air. The station also invites guests promoting various worthy local causes onto its "Live at Five" Segment, without charge, for airing weekdays at in the key 5:00 PM slot.

In light of that showing, Pollack/Belz submits that the Video Division should offset Pollack/Belz' exceptionally robust record of local program origination against its minor delays with respect to uploading a handful of documents to the online public file and its mistaken belief, as of the date of its most recent amendment to the KIEM-TV

license renewal application, that the station had complied with the uploading requirements for 2013 and 2015 in a timely manner. .

As Mr. Hockaday explains, until recently, he believed that all issues/programs lists and commercial limits certifications had been uploaded to the FCC's online public file for the station on a timely basis, based on the account given him by the employee who had been tasked with this function. This was not surprising, because the station received no complaint from any member of the public at any time to the effect that any such items were ever missing. If there had been such a complaint or inquiry, Pollack/Belz would have supplied the necessary documentation at the time.

Notably, in all the years that KIEM-TV maintained a hard copy of the public file at its studios in Eureka, and continues to do so now, no member of the public has ever asked to see any part of the public file other than the political file, and Mr. Hockaday is unaware of any interest on the part of any member of the public in the station's issues/programs lists or commercial limits certifications based on a review or attempt to review the online public file.

Recently management discovered information that caused it to doubt the employee's account of the circumstances surrounding the 2013 and 2015 filing delays. Nevertheless, the licensee believed in good faith, at the time the 2014 supplemental renewal application was filed and as of the date of its recent amendment to the license renewal application, that the required items had been uploaded on time, or at the very least that the employee had reason to believe that she had fulfilled the uploading requirement.

Thus on balance whatever perceived “harm” might have resulted from the licensee’s filing delays or its confusion about whether there had been such delays in fact, is more than compensated for by the extent of the programming that the station broadcasting in response to community needs. And as to the commercial limits certifications, what is more important – that the certifications be filed by some particular date, or that the amount of commercial matter in the station’s children’s programming actually remain within FCC limits?

Accordingly, this situation is governed by the doctrine of *de minimis non curat lex*, or "the law doesn't concern itself with trifles." See *Brandt v. Bd. of Educ. of City of Chicago*, [480 F.3d 460, 465](#) (7th Cir. 2007). This doctrine is a "venerable maxim" that "is part of the established background of legal principles against which all enactments are adopted." *Wis. Dep't. of Revenue v. William Wrigley, Jr. Co.*, [505 U.S. 214, 231](#) (1992). The principle applies not only to statutory enactments but also to regulations prescribed by federal regulatory bodies.

The principle has bears on the enforcement of a statute that aims at the repression of real and substantial abuses. *United States v. Hocking Valley R. Co.*, 194 F. 234, 250 (N.D. Ohio 1911), *aff'd sub nom. Hocking Valley R. Co. v. United States*, 210 F. 735 (6th Cir. 1914). When the harm caused by a regulatory violation is particularly small or insignificant, the *de minimis* principle applies to militate against any adverse action by the agency.

In determining whether a particular activity is deemed to be a *de minimis* deviation from a prescribed standard, the agency must consider the violation with reference to the

purpose of the standard. *Wis. Dep't of Revenue*, 505 U.S. at 232. Here, the purpose of the requirement for filing issues/programs lists – to encourage stations to serve their communities with programming responsive to local needs – was more than satisfied by Pollack/Belz programming efforts, regardless of the timing of the uploading of the subject lists.

Likewise, in *U.S. v. General Foods Corp.*, the court found that the presence of negligible amounts of bacteria in certain packages of frozen green beans was *de minimis*, even though such bacterial presence technically violated a rule of the Food & Drug Administration which “very clearly prohibit[ed] **all** filthy, putrid or decomposed substances contained in food.” *United States v. Gen. Foods Corp.*, 446 F. Supp. 740, 743 (N.D.N.Y.), *emphasis added*; *aff'd* 591 F.2d 1332 (2d Cir. 1978). The presence of even a single bacterium therefore amounted to a violation of the rule, if enforced literally. However, where the amount of bacteria was so slight as to pose no actual danger to public safety, the Court determined that the violation did not implicate the purpose of the FDA standards regulating the purity and quality of food, and there was no proper basis for prosecution of the manufacturer.

In this case, it does not appear that there was any actual injury to the public from the licensee’s failure to self-incriminate as to the 2013 and 2015 filing delays. The licensee in good faith thought that it had made reasonable efforts to comply, and no member of the public ever complained about the delay in posting the relevant documents.

Finally, it is not rational to penalize a licensee for failing to alert the FCC to a violation that is plainly obvious to the Commission based on the Commission’s own

records. As the Court of Appeals for the District of Columbia Circuit has held, licensees cannot be damned for concealing from the agency matters that are on sitting there in the FCC's own files.

In view of the foregoing, the proposed six thousand dollar forfeiture is not warranted. Rather than confirm that forfeiture, the Division should recognize KIEM-TV's exceptional level of public service programming by remitting the forfeiture entirely. Such an action would convey the message to licensees in general that the FCC places recognizes that compliance with the spirit of FCC regulation concerning local service is of greater importance than the timing of a station's compliance with the letter of regulations mandating the uploading of certain pieces of paper to the online public file.

Respectfully submitted,

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